IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.06.2005

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice AR.RAMALINGAM

Writ Petition Nos.2265 and 2266 of 2002

1. State of Tamilnadu, rep. by
its Secretary to Government,
Home Department,
Chennai-9.

2. The Director General of Police,
Chennai-4.

3. The Chairman,
Tamilnadu Uniformed
Services Recruitment Board,
4, 9th Cross Street,
Indira Nagar,
Chennai-20. ... Petitioners in both W.Ps.

vs.

G.Sathish Kumar ... R1 in WP.2265/02

G.Spencer ... R1 in WP.2266/02

The Registrar,
Tamilnadu Administrative Tribunal,
Chennai-104. .. R-2 in both WPs.

For petitioners : Mr.S.Srinivasan,
Govt. Advocate.

For R1 in WP.2265/02 : Mr.A.Thirumurthy

For R1 in WP.2266/02 : Mr.K.Venkataramani

Petitions under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the second respondent pertaining to the orders dated 21.09.2001,

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made in O.A. No.4266/99 (challenged in WP.2265/02) and O.A. No.3903/99 (challenged in WP.2266/02) and to quash the same.

COMMON ORDER

(Order of the Court was made by P.SATHASIVAM, J.)

Aggrieved by the order of the Tamil Nadu Administrative Tribunal, dated 21.09.2001, made in O.A. No.4266 of 1999, directing the Director General of Police to issue appointment order to the applicant Sathish Kumar (first respondent herein) as Grade-II Police Constable, the Government of Tamil Nadu, Home Department; Director General of Police, Chennai-4 and the Chairman, Tamil Nadu Uniformed Services Recruitment Board, Chennai, have filed W.P. No.2265 of 2002. Questioning similar direction issued in O.A. No.3903 of 1999, in the case of the applicant therein by name G.Spencer (first respondent herein), the very same Officers have filed another Writ Petition, that is, W.P. No.2266 of 2002.

2. Since both the Writ Petitions relate to similar order passed by the Tamil Nadu Administrative Tribunal, they are being disposed of by the following common order.

3. In the light of the order to be passed here under, it is unnecessary to refer all the factual matrix as averred in the affidavit and counter affidavit by the respective parties. However, it is to be noted that though both the applicants were successful in respect of the Physical and Medical Test for the post of Grade-II Police Constable, inasmuch as they did not refer their antecedents, namely, involvement in any criminal case, in Column-15 of the Application, they were not considered and their claim was rejected. Questioning the same, both of them preferred separate Original Applications before the Tamil Nadu Administrative Tribunal.

4. In the case of G.Sathish Kumar, it is stated that he involved in one Criminal Case, that is, in C.C. No.402 of 1998 and he was acquitted by the Judicial Magistrate, Kumbakonam, by an order dated 19.2.1999. It is further stated that though this aspect has not been stated in the application, however, he informed the authorities about the acquittal. It is also stated that since he was acquitted, there is no bar to give him posting orders since he was otherwise qualified.

In the case of G.Spencer, here again, though he failed to mention regarding his involvement in criminal case, subsequent to the submission of the application, he informed about his

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acquittal in the criminal case to the authority before taking decision.

These aspects are not in dispute and the same are evident from the orders of the Tribunal itself.

5. Taking note of the fact that both the applicants were otherwise qualified and in fact considered for the Post of Grade-II Police Constable, because of the fact that they did not inform about their antecedents, particularly involvement in criminal case, in their respective applications, they were not given appointment orders. We also verified from the respective applications. Though both the applicants have not mentioned their involvement in criminal case prior to selection, the fact remains, both of them, immediately after submitting their application, volunteered and furnished necessary information regarding their acquittal in the criminal case filed against them. This aspect is also not in dispute. The Tribunal, on consideration of the fact that both the applicants were otherwise fully qualified for being considered for appointment as Grade-II Police Constable and taking note of their conduct in submitting the details regarding their involvement in criminal case voluntarily before taking decision, issued positive direction to the Director General of Police for appointing them as Grade-II Police Constable within a period of eight weeks from the date of receipt of copy of the said order.

6. Learned counsel appearing for the contesting first respondent in both the Writ Petitions, apart from contending that both of them satisfied and fulfilled the criteria for selection to the post of Grade-II Police Constable, also argued that though they failed to refer the criminal case prior to the selection process, inasmuch as they volunteered and communicated the required details regarding acquittal in the criminal case, the appointing authority ought to have issued orders and as the same was rightly considered and accepted by the Tribunal, there is no ground for interference. In support of their contention, they also relied on a decision of the Apex Court reported in (1999) 1 SCC 246 (Commissioner of Police v. Dhaval Singh). In almost similar factual position, the Honourable Supreme Court of India, after accepting similar explanation with regard to furnishing information subsequent to submission of the application, concluded that merely because there was an omission to refer their involvement in criminal case, the claim cannot be rejected, and refused to interfere with the order of the Tribunal, issued similar direction as done in the present case. In paragraph No.5 of the Judgment, after noting that the applicant therein conveyed the said information voluntarily before taking decision and the same was not considered and

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accepted by the appointing authority and after finding that the enquiry by the Tribunal is justified, the Supreme Court dismissed the appeal filed by the Commissioner of Police, Delhi. In the said Paragraph, Their Lordships have held thus:

> *" ... The cancellation of the candidature under the circumstances was without any proper application of mind and without taking into consideration all relevant material. The Tribunal, therefore, rightly set it aside. We uphold the order of the Tribunal, though for slightly different reasons, as mentioned above."*

7. It is not in dispute that by applying the conclusion arrived at in the above referred case, the impugned orders of the Tribunal cannot be faulted with. We have already referred to the fact that both the applicants/first respondent in the above writ petitions satisfied and fulfilled all the required conditions/qualifications, but there was one defect, viz., omission to fill in clause No.15 of the application. As observed by the Supreme Court, the said defect is curable and in view of the fact that information was furnished by the applicants voluntarily, the appointing authority ought to have considered the same and appointed them as claimed.

8. We are in entire agreement with the conclusion arrived at by the Tribunal and we do not find any merit in the above Writ Petitions. Accordingly, both the Writ Petitions fail and the same are dismissed. No costs. In view of the dismissal of the Writ Petitions, the petitioners herein are directed to implement the orders of the Tribunal within a period of four weeks from the date of receipt of copy of this order.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

JI.

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To

1.The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai.104.

2.The Secretary to Government, State of Tamilnadu,
Hoe (Police III) Department, Chennai-9.

3.The Director General of Police, Chennai-4.

4.The Chairman, Tamilnadu Uniformed Services,
Recruitment Board, No.4, 9th Cross Street, Indira Nagar,
Chennai-20.

one cc to Mr.A.Thirumurthy, advocate (SR.No.25252)

one cc to M/s. K.Venkataraman, advocate (SR.No.25429)

WPs.2265 & 2266 of 2005.

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